IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH OCTOBER 2006 / 27TH ASWINA 1928

WP(C).No. 12721 of 2005(M)

PETITIONER:

V.SUNDARESAN, STATION MASTER, KSRTC
OPERATING CENTRE, KULATHUPUZHA, RESIDING AT
SUNDARA BHAVANAM, PULAMON P.O, KOTTARAKKARA,
KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN
SRI.K.V.ANIL KUMAR
SMT.THARA THAMBAN
SRI.V.K.SATHYANATHAN

RESPONDENTS:
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1. THE KERALA STATE ROAD TRANSPORT
CORPORATION, TRANSPORT BHAVAN, THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE ASSISTANT TRANSPORT OFFICER, KSRTC,
PUNALUR.

3. THE EXECUTIVE DIRECTOR (A&E), OFFICE OF
THE MANAGING DIRECTOR, KSRTC, TRANSPORT BHAVAN,
THIRUVANANTHAPURAM.

BY ADV.SRI.SAJEEVKUMAR K.GOPAL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.12721 OF 2005

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DATED THIS THE 19th OCTOBER, 2006

J U D G M E N T

The writ petitioner challenges Ext.P2 order cancelling the promotion given to him as Station Master and also Ext.P7 order confirming Ext.P2 on 1.3.1977. The writ petitioner joined the service of the K.S.R.T.C. as Conductor. He was sanctioned leave without allowance from 26.9.1990 to 17.9.1998 for taking up employment abroad. Once the leave period was over, on 18.9.1998 he rejoined service. Thereafter, on the basis of Ext.P1 memo dated 16.12.2004, which was issued on the basis of a Chief Office Memo dated 14.12.2004, he was promoted as Station Master. It was while working as Station Master that the 3rd respondent-Executive Director issued Ext.P2 memo cancelling his promotion. The 3rd respondent directed the A.T.O.. Punalur to engage the petitioner as conductor. Against Ext.P2, the petitioner filed Ext.P3 objections. Thereafter, he approached this Court. This Court passed Ext.P4 judgment and directed the Managing Director to take a fresh decision considering Ext.P3. But the 3rd respondent himself issued Ext.P5 hearing notice to the petitioner. Thereafter, upon receiving Ext.P5, the petitioner filed

Ext.P6 additional representation before the Managing Director under copy to the Executive Director. It is without considering the contentions raised in Ext.P6 and Ext.P3 that the 3rd respondent himself has issued Ext.P7 confirming Ext.P3. The petitioner impugns Ext.P7 on several grounds and seeks a writ of certiorari to quash Exts.P2 and P7 and direction to continue him as Station Master.

2. The K.S.R.T.C. has filed a counter affidavit. It is stated therein that the petitioner was advised by the P.S.C. for appointment as conductor on 24.2.1977 and he reported for duty with effect from 17.3.1977. While working as conductor, he was sanctioned leave without allowance for taking up employment abroad which will not count for any service benefits. The leave period from 26.9.1990 to 17.9.1998 is not be counted at all for service benefits. The State Government has formulated rules regarding sanction of leave without allowance for its employees for taking up employment abroad. The K.S.R.T.C. has also made the same rules applicable to the employees of the K.S.R.T.C. with effect from 23.6.1984. Therefore, for the purpose of all service benefits including promotion after 23.6.1984, the period of leave without allowance cannot be reckoned with at all. The petitioner forfeited his seniority during the period of leave without

allowance Thus, the promotion which was given to the petitioner was wrongly given. What the K.S.R.T.C. has done now is only to rectify the mistake.

3. The petitioner filed I.A.No.13282 of 2006 seeking that he be permitted to continue as Station Master. He refers to Rule 27 of the K.S. and S.S.R. Rule 27 says that seniority of any employee is to be fixed on the basis of the date of effective advice of the P.S.C. He concedes that as per Rule 4 of Appendix XII-A of Part I of K.S.R., he is not entitled to question the promotions given to his juniors during the period when he was on leave without allowance for taking up employment abroad. But his contention is that as far as the vacancies which have arisen subsequent to 18.9.1998, he is entitled to have his full seniority taken into account. He has produced as Ext.P8, copy of the promotion order given to him on 14.12.2004. He contends on the basis of Ext.P8 that he is entitled to continue as Station Master. He points out that Sri.M.Abdul Kalam, Sl.No.27 in Ext.P8 was similarly circumstanced and was reverted as in the case of the petitioner. But the aforesaid Abdul Kalam is even now permitted to continue in the promoted post. The petitioner has also produced Ext.P9 memo dated 21.2.2005 of the A.T.O, Punalur, along with I.A.No.14043 of 2006.

From Ext.P9 it is clear that the petitioner is reverted as conductor. The petitioner also points out through the affidavit in support of the I.A. that time-bound higher grades have been given to him without taking into account the period on which he was on leave and taking into account only those periods during which he was physically present for duty.

4. I have heard the submissions of Mr.M.V.Thampan, learned counsel for the petitioner and Mr.Sajeevkumar K.Gopal, learned Standing Counsel for the K.S.R.T.C. Mr.M.V.Thampan would refer to Appendix XII-A of Part I of K.S.R. and also to the judgments of this Court in **Sreedevi Amma v. Radha Devi** (2005 (2) KLT 796), O.P.No.32006 of 2001, W.A.No.1167 of 2003 and O.P.3159 of 1998.

5. On hearing the submissions of Mr.M.V.Thampan and the reply of Mr.Sajeevkumar K.Gopal, I directed the K.S.R.T.C. to produce copy of the order by which leave without allowance was sanctioned to the petitioner. The K.S.R.T.C. has thereafter filed an additional counter affidavit. Ext.R1(a) dated 14.3.1991 produced along with the additional counter affidavit is the leave sanctioning order. Through the additional counter affidavit, the K.S.R.T.C. raised another contention. The K.S.R.T.C. has on 2.2.1987 decided on the basis of the agreement

of settlement with its recognised trade unions that ratio promotions will be abolished and promotions will be made depending on the qualifying service undergone by various incumbents in different grades. Ext.R1(b) dated 9.10.1987 is the grade promotion rules. It is contended that as per Ext.R1(b), leave without allowance will not be taken into account for grade promotions at all. It is only those conductors who obtained Special Grade in 1997 who are being promoted as Station Masters. The petitioner is a person who could gain Special Grade only in 2003. Therefore, there is nothing illegal about Ext.P7.

6. The writ petitioner has filed a detailed reply affidavit reiterating his contentions earlier and denying the contentions raised by the counter affidavit and the additional counter affidavit of the K.S.R.T.C. Thereafter, both the advocates completed their arguments. Sri.Sajeevkumar K.Gopal would raise arguments mainly on the basis of the pleadings and the documents placed on record. He referred to the judgment of a Division Bench of this Court in **Abdul Razak v. State of Kerala** (2006 (1) KLT 818) and relied on that decision very strongly.

7. Having considered the rival submissions in the light of the

relevant statutory provisions and the documents placed on record, and taking into account the ratio which emerges from various judicial precedents cited before me, I am of the view that the writ petitioner is entitled for relief. Since the K.S.R. has been adopted by the K.S.R.T.C., the most relevant provision to be considered in this case is Appendix XII-A of Part I of K.S.R. Rule 4 of Appendix XII-A of Part I of K.S.R. is quoted as follows:-

> "4. Permanent officers and non-permanent officers who have completed probation in their entry cadre in the regular service of Government may be granted leave without allowances under these rules. In such cases, for, and during the currency of the period of leave, the officers shall lose all service benefits such as the earning of leave including half pay leave, pension, gratuity, increment, etc., and also promotion chances as may arise with reference to their seniority in the posts from which they proceeded on leave. They shall also lose seniority in the higher grade/grades with reference to their juniors who might get promoted to such grade/grades before they rejoin duty."

When carefully read, it will be seen that Rule 4 only says that the

incumbent who has gone on leave availing leave without allowance for taking up employment elsewhere will forfeit his seniority and eligibility for promotion to those of his juniors who were promoted during his period of leave.

8. Rule 27 of the K.S. and S.S.R. is another important rule to be considered. Rule 27(a), (b) and (c) are as follows:-

> "27. Seniority.--(a) Seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category or grade....."
>
> "(b) The appointing authority shall, at the time of passing an order appointing two or more persons simultaneously to a service, fix the order of preference among them; and seniority shall be determined in accordance with it....."
>
> "(c) Notwithstanding anything contained in clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank

as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list....."

9. Seniority is a statutory entitlement and this is why it is often said that seniority by itself is not a service benefit. Ext.R1(a) is the order by which leave without allowance is sanctioned to the petitioner. It is certainly stated in Ext.R1(a) that the leave period will be dies non for all types of service benefits. But Ext.R1(a) will have to be understood in the light of Appendix XII-A of Part I of K.S.R. which is applicable to the petitioner. While it is understood in that manner, it will have to be seen that the implication of availing leave without allowance is only that the employee will forfeit his seniority during the leave period only to those juniors who are able to secure their promotions during the period of leave. I am not inclined to accept the arguments of the learned Standing Counsel based on Ext.R1(b) grade promotion rules. Time-bound higher grade is granted only to compensate for the situation of an incumbent having to work without

promotion continuously for long periods. The rules pertaining to time-bound higher grades cannot have relevance in the case of rules pertaining to granting of regular promotions. An Employee will be entitled to time-bound higher grade only if he actually does duty for a particular duration. In the case of the petitioner, all the time-bound higher grades which were granted to him were so granted on the basis of duty actually performed by him and without taking into account the 8-year period during which he was on leave without allowance. If that 8-year period was also taken into account, the petitioner would have been entitled for Special Grade in 1995 itself. No material has been placed before me to support the contention of the K.S.R.T.C. that a conductor will be entitled for promotion as Station Master only if he completes a particular length of service as Special Grade Conductor. When Ext.P8 is perused, it will be seen that promotions have been made from out of the gradation list of conductors on the basis of their rank and seniority. The judgment of the Division Bench in **Abdul Razak's** case (supra) relied on by Sri.Sajeevkumar K.Gopal is a judgment which pertains to time-bound higher grade promotions. That judgment is not relevant in this case which pertains to regular promotions.

10. K.Balakrishnan Nair, J. had occasion to consider in his judgment in O.P.No.32006 of 2001, the implications of availing of leave without allowance and the interplay between Appendix XII-A of Part I of K.S.R. and Rule 27 of K.S. & S.S.R. The petitioners in that O.P. raised contentions similar to the ones urged before me by Mr.M.V.Thampan. They were also drivers in the K.S.R.T.C. and the contentions raised by the Corporation in that case were similar to the ones raised by Sri.Sajeevkumar K.Gopal in this case. Repelling the contentions of the Corporation, the learned Judge would state as follows in his judgment:-

> "Therefore, availing of leave without allowance will not in any way affect the seniority of the petitioners in the cadre of driver. Rule 4 of Appendix XII-A only says that during the absence of the petitioners, their juniors can be promoted to the higher grade and in that event, juniors will gain seniority in the higher grade even though the petitioners are subsequently promoted. The said rule will have no bearing on the seniority position of the incumbents in the entry cadre. In view of the above position, it is declared that by

availing leave without allowance, petitioners have not lost their seniority in the cadre of driver."

It was the very same issue which was decided by the Division Bench through the judgment authored by K.A.Abdul Gafoor, J. in W.A.No.1167 of 2003. The Division Bench has, by that judgment, approved the view of the learned Single Judge that an employee who goes on leave without allowance for taking up employment will forfeit his seniority only to those of his juniors who secured promotions during the leave period. C.S.Rajan, J. also considered the same issue in O.P.No.3159 of 1998 where the petitioner was a Government High School teacher. Significantly, the order in that case was worded exactly similar to Ext.R1(a) order in this case. It is stated that the period of leave without allowance will be treated as dies non for all service benefits. Rajan, J. noted that on account of the so-called dies non, the petitioner in that case was never discharged from service nor was he ever reappointed. The learned Judge held that so long as Rule 27 of the K.S. and S.S.R. remains on the statute book, it will not be possible to accept the argument that a person who has availed leave without allowance for taking up employment abroad will forfeit his seniority for ever and to all his juniors.

I am in respectful agreement with the views of C.S.Rajan J., K.A.Abdul Gafoor J. and also that of K.Balakrishnan Nair, J. The promotion that was given to the petitioner as per Ext.P8 after he rejoined service was, according to me, perfectly in order. In view of the above, the Writ Petition will stand allowed in the following terms:-

> Exts.P2, P7 and P9 are quashed. Ext.P8 will stand restored. The respondents are directed to continue the petitioner as Station Master on the basis of Ext.P8. All consequential benefits resulting from quashment of Exts.P2, P7 and P9 will be released to the petitioner at the earliest. The parties are directed to suffer their respective costs in the circumstances of the case.

(PIUS C. KURIAKOSE, JUDGE)

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